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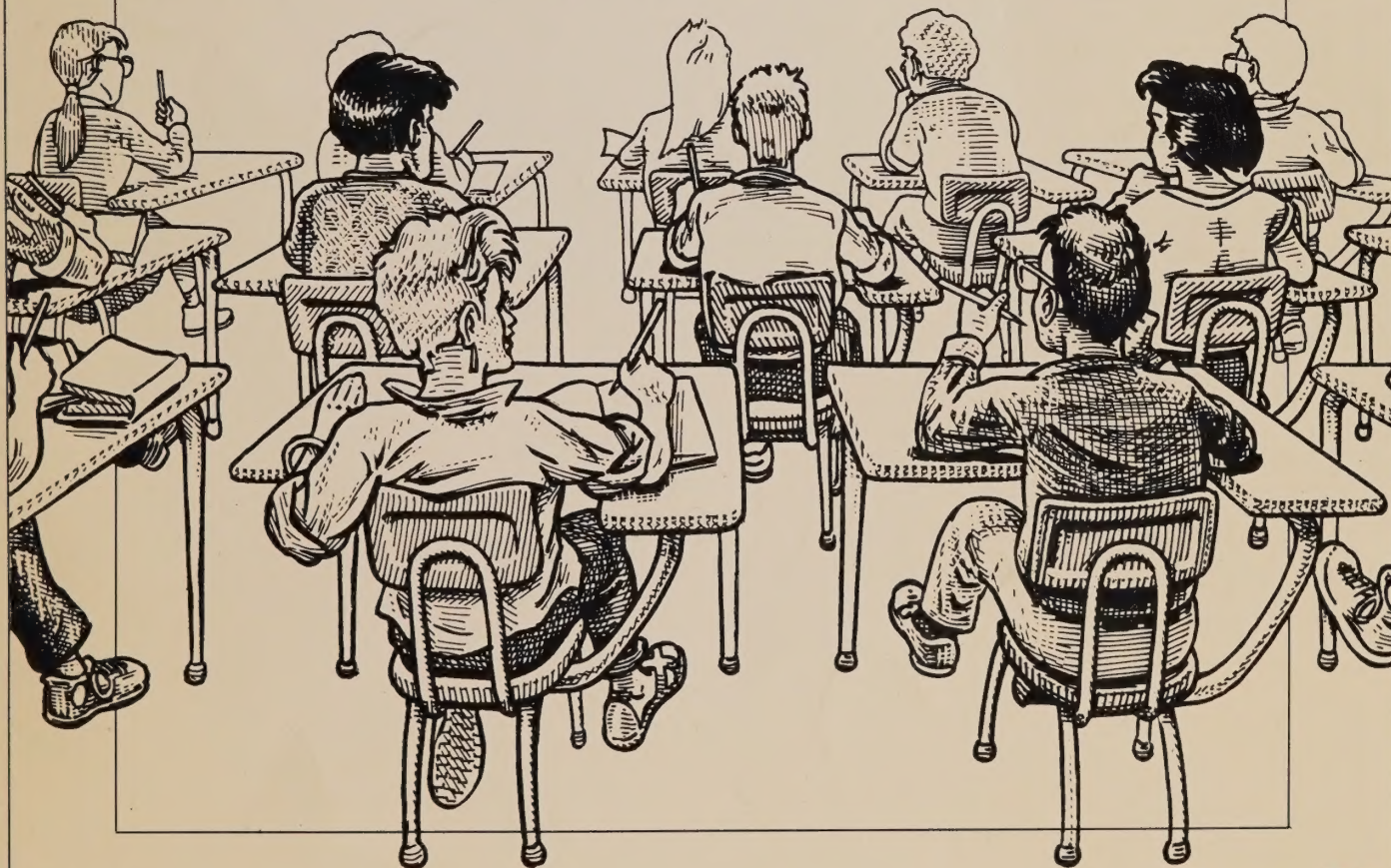
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# the CANADIAN CHARTER OF RIGHTS & FREEDOMS

■ A GUIDE FOR STUDENTS ■



Canada 

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# WHY A CHARTER?

**WHY** do we Canadians have a Charter of Rights and Freedoms? How will it affect our

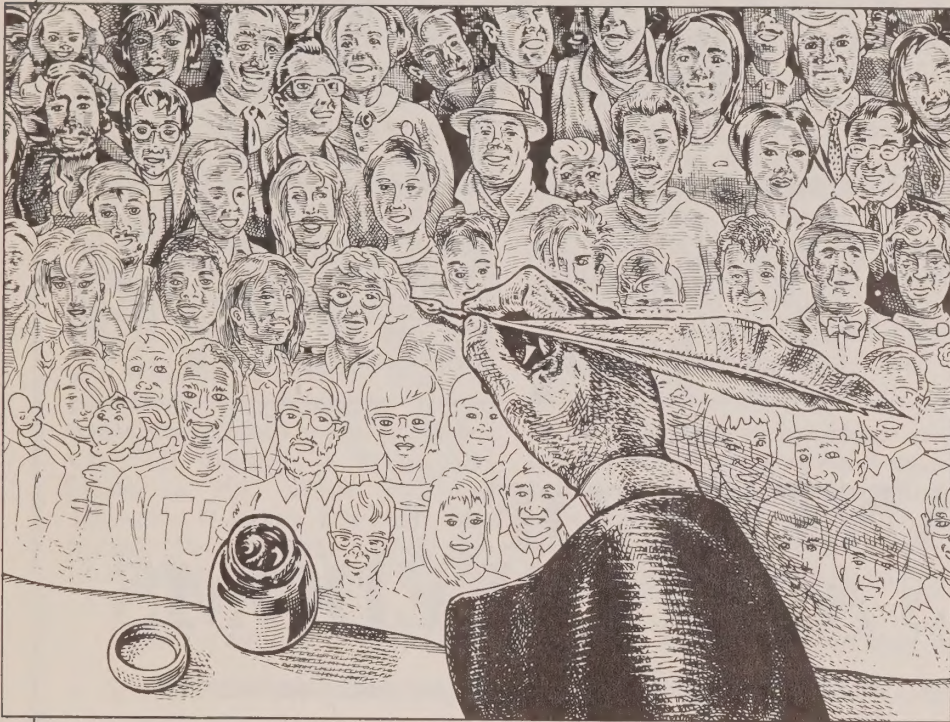
rights and freedoms are *entrenched*, i.e. fortified as with the trench or moat which surrounds a castle.

This is not to say that we Canadians lacked rights and freedoms prior to the Charter. On the contrary, Canada inherited a strong common law tradition of civil liberties which it buttressed with such legislation as the *Canadian Bill of Rights* of 1960 and various human rights codes. While this legislation is not entrenched in the Constitution and is, therefore, more susceptible to alteration, it remains an important source of rights and freedoms along with the Charter.

## WHO BENEFITS FROM THE CHARTER?

The Charter specifies who benefits from each of the rights and freedoms. For example, equality rights are guaranteed to every individual. Mobility rights are guaranteed only to citizens of Canada. Fundamental freedoms are guaranteed to everyone. To determine who benefits from a particular section of the Charter you must read that section and see who it says is protected by that particular section. Different sections protect different groups of people.

The question of *how* the Charter will affect our lives is, as yet, unanswered. Although many of the rights and freedoms set out in the Charter are ones which Canadians have enjoyed for a long time, the Charter itself is very new. In the course of deciding cases in light of the Charter, judges will have to decide exactly what the words of the Charter mean. The Charter is like a pencil sketch, showing only broad outlines. It is now up to Canada's judges to add all the shading and colour needed to make it a living portrait of Canadian rights and freedoms. As young Canadians, you will observe this process for the rest of your lives.



lives as a people and as individuals?

We only have an answer to the first question. The majority of Canada's elected representatives, backed by a majority of Canadians, felt it was important to set out our rights and freedoms in such a way that they could not easily be infringed or denied. They did this in 1982 by including a list of rights and freedoms in Canada's new Constitution. As part of the Constitution, the list—called the *Charter of Rights and Freedoms*—can only be altered with great difficulty. Any proposed change to the Charter must receive the approval of the Senate, the House of Commons and two thirds of the provinces representing at least fifty per cent of the Canadian population. As part of the Constitution, our



## TO WHOM DOES THE CHARTER APPLY?

The Charter definitely applies to both the federal and provincial governments. It is possible that in the future the Courts may decide that this means that the Charter applies more broadly.

If the Courts decide that a government statute has violated the Charter, they declare it invalid. When a statute or law is declared invalid, it is of no effect and cannot be enforced.

## THE STRUCTURE OF THE CHARTER

The Canadian Charter of Rights and Freedoms consists of 34 numbered sections. Many of these sections are further broken down into sub-sections, each of which is given an identifying number or letter. You will often hear people referring to parts of the Charter by section and sub-section numbers.

In this Guide, however, we have tried to avoid possible confusion about sections and sub-sections by

referring to them equally as *provisions*. Throughout the Guide you will see the main provisions of the Charter in language which is identical or very similar to that used in the Charter. However, since the language and forms used on legal documents are sometimes confusing to the ordinary person, we have occasionally altered the wording of the provisions in this Guide. If you want to see exactly how they are set out in the Charter, you should refer to the complete version of the Charter which is published on page 21 of this Guide.

## THE CHARTER'S TIMETABLE

The version of the Charter which was included in the Constitution was the product of a long process of debate, compromise and sometimes bitter disagreement among various levels of government, political parties and citizens' groups of all kinds. The result is in keeping with the Canadian political tradition of compromise, balance and moderation.

There are many sections of the

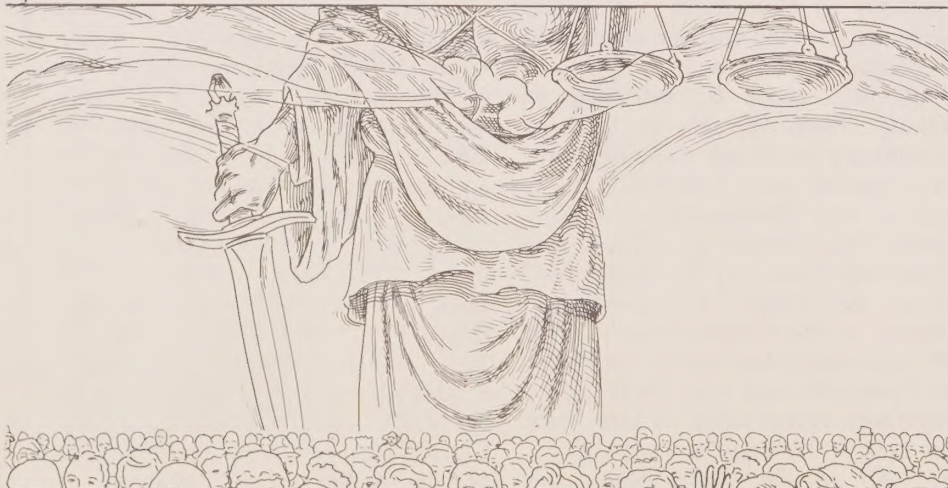
Charter which were altered to accommodate the concerns of special interest groups and of both the federal and provincial governments. One example is the provision in section 32.2 which delayed the equality rights from coming into effect until April, 1985. The purpose of this postponement was to give the governments time to modify their existing legislation so that it would not violate the Charter. Other compromises were made, such as leaving out the right to privacy and the right to enjoy property.

## THE OVERRIDE PROVISION

Section 33 permits Parliament and the provincial governments to prevent many sections of the Charter from having any effect on the validity of particular statutes. The government can include an *override* provision in any statute and it will then operate in spite of sections 2 and 7-15 of the Charter. These override provisions cease to have effect after 5 years but they can be re-enacted by the government at that time. ■

# 1. GUARANTEE OF RIGHTS AND FREEDOMS

*The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. (section 1)*



**THIS** section guarantees the rights and freedoms set out in the Charter. It also specifies that this is not an absolute guarantee but only a limited one. It allows the government to pass laws which limit our rights and freedoms. These limits, however, must be both reasonable and demonstrably justifiable in a court of law. This means that once you establish that a law has limited one of your rights or freedoms, then the government must prove in court that the limitation is reasonable and demonstrate it to be justifiable in a free and democratic society. □



# ISSUES

● **What are justifiable limits on rights and freedoms?** Most of us have no trouble with the idea that, while everyone should enjoy freedom of expression, a person who yells "Fire!" in a crowded theatre is abusing that right if, in fact, there is no fire. We accept that certain limits have to be

placed on freedom of speech if others are not to be hurt. But there are many other areas which are not so clear. What about hate literature, for example? Does a person's freedom of expression include the right to write and distribute hate literature against other groups? Is the government

justified in suspending rights and freedoms if Canada is at war, as it did during the First and Second World Wars? Or if it thinks that a violent revolution is pending, as it did in 1970 during the kidnapping and murder of a prominent Quebec politician? What do you think? ■

## 2. FUNDAMENTAL FREEDOMS\*

*Everyone has...freedom of conscience and religion (section 2(a))*

**THIS** provision of the Charter guarantees that everyone in Canada may freely choose his or her religion or not have any religion at all. Without it a person might be persecuted for belonging to an unpopular religious group. In Quebec City, for example, a by-law was passed in 1933 which prohibited Jehovah's Witnesses from distributing their literature without permission of the chief of police. The Supreme

Court of Canada held that the by-law did not extend so as to prohibit

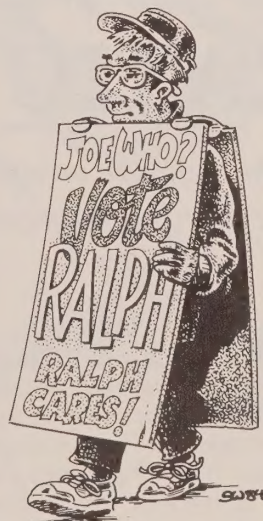
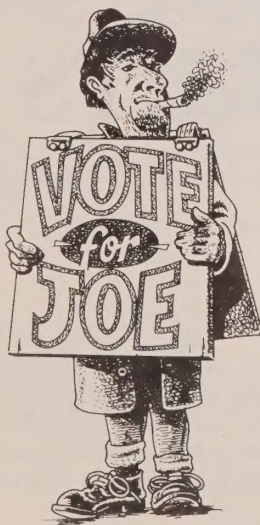
Jehovah's Witnesses from distributing literature. □

# ISSUES

● **Does freedom of conscience and religion include practices which might be contrary to Canadian law?** Some native groups, for example, have claimed that certain illegal drugs are part of their traditional religious

ceremonies. Should an exception be made for them in order that their religious freedom be protected or should religious freedom be limited in this case? What do you think the courts should decide? □

*Everyone has...freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication (section 2(b)).*



**THIS** part of the Charter guarantees freedoms which Canadians have enjoyed for many years. We have almost come to take for granted that we may speak our minds on every issue without fear of being arrested and punished by the government. Journalists, television commentators, politicians, religious leaders and ordinary people in the street freely express their opinions about topics of the day. Yet such freedoms are denied in many countries in the world today; people who criticize the government are frequently put in jail or suffer worse fates. □

\* The provisions of the Charter described in this chapter can be avoided or overridden with respect to particular laws for a period of up to five years. This is done by stating in a particular statute that the statute will operate in spite of the Charter. This is called a notwithstanding clause and can be inserted by either Parliament or the Provincial Legislatures into any legislation. After five years these clauses will become ineffective unless the government re-enacts them.



## The Charter in Action

In the *Red Hot Video* case, the video company argued that a zoning by-law violated their freedom of expression. The by-law prohibited any land in the City of Vancouver from being used for retail sales of "sex-oriented products." This included any material depicting sex acts or sex organs.

# ISSUES

• Rights and freedoms may sometimes have to be limited in order to protect the rights of others. A journalist has the right to express his or her opinion about a certain politician but does this include the right to unfairly destroy the politician's reputation? A person or a group has the right to express an opinion about another person or a

group but does this include the right to encourage hatred or violence against that person or group? Should freedom of opinion and expression protect people who make and profit from pornography, especially if it involves children or appears to condone violence? What limits, if any, on freedom of expression do you think are reasonable? □

*Everyone has ... freedom of peaceful assembly (section 2(c)).*

*Everyone has ... freedom of association (section 2(d)).*

**THE** freedom to join together with people of like minds is one which we tend to take for granted. We are accustomed to the idea that people form groups in favour of, or opposed to, any given subject and that people may hold peaceful rallies

and meetings to publicize their views. But, since people in other countries are very severely punished for doing the same thing, it is a good idea that our Charter further reinforces our right to freedom of peaceful assembly and association. □

## The Charter In Action

In the *Maltby* case the inmates at a Saskatchewan correctional centre argued that the limited visiting privileges violated their right to freedom of association.

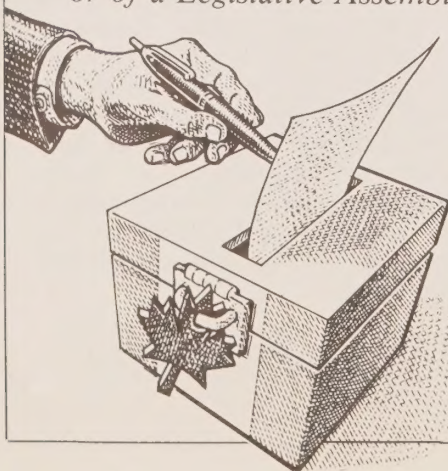
# ISSUES

• Should there be any limits on these freedoms? For example, should racists be allowed to organize into groups for the purpose of inciting hatred against other groups? Should demonstrators be required to obtain police permission to demonstrate at a

certain time and place or should they be permitted to hold a demonstration whenever they want, thus, perhaps, causing disruption and inconvenience to other people? What do you think a judge should decide? ■

## 3. DEMOCRATIC RIGHTS

*Every citizen of Canada has the right to vote in an election of the House of Commons or of a Legislative Assembly and to be qualified for membership therein (section 3).*



**WHILE** almost all adult citizens have been entitled to vote in elections for many years, this has only become a constitutional right since it was included in the Charter. In the past, the Parliament and legislatures have been able to deny the vote to certain groups of people. Canadians of Chinese and Japanese origin were prohibited from

voting until after World War II. Women were not allowed to vote in federal elections until 1918. More recently, native Indians were denied the vote in federal elections until 1960.

This provision means that Parliament and the legislatures can no longer deny the vote to any group of citizens except according to



Section 1, i.e. where limiting a citizen's right to vote can be "demonstrably justified in a free and democratic society." This exception, presumably, will continue to apply in the case of Canadians under the age of 18. Likewise, it will probably continue to apply to persons who have been deemed mentally incompetent and to inmates of prisons. Federally-appointed judges, as well, are barred from voting because they are supposed to be free of any political bias, although it remains to be seen if the courts will consider this a justifiable limit. □

## ISSUES

● **Prisoners' rights groups have demanded that prisoners be allowed to vote.** Is it reasonable in a free and democratic society to deny prisoners the right to vote? □

### OTHER DEMOCRATIC RIGHTS GUARANTEED BY THE CHARTER

● Section 4 of the Charter stipulates that Parliament and the provincial legislatures must call elections at least once every five years. This ensures that the people of Canada will have a

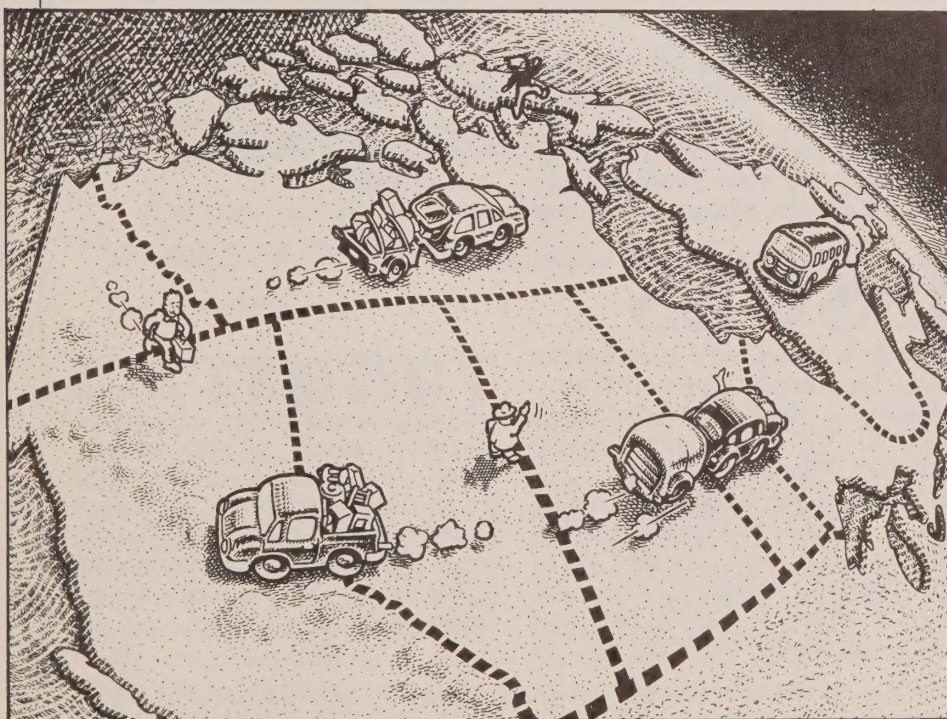
chance to elect their representatives at intervals of no more than five years. The only time regular elections can be suspended is in time of war, impending war, invasion or insurrection. In such cases, elections can be delayed if two-thirds of the Parliament or legislature agree.

● Section 5 of the Charter requires the Parliament and the provincial legislatures to meet at least once every twelve months. This ensures that members of Parliament or the legislature who form the government will have to explain and defend their policies in debates in Parliament or the legislature. ■

# 4. MOBILITY RIGHTS

*Every citizen of Canada has the right to enter, remain in and leave Canada (section 6,(1)).*

*Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right . . . to move to and take up residence in any province and . . . to pursue the gaining of a livelihood in any province (section 6,(2)).*



**THE** Canadian people are very mobile, travelling and working abroad as well as moving from one province to another. In a single year as much as two per cent of the population may go to live and work in another province. This part of the Charter confirms our right to move freely both within and without Canada.

If you seek work in another province, employers must give you the same consideration that they give established residents of that province. This does not mean, however, that you will not be required to meet the province's professional or technical requirements to engage in certain kinds of work. For example, if you wish to work as a lawyer, doctor or auto mechanic in another province, you may have to pass a test based on that province's standards, as would any resident of the province.

In addition, the Charter contains a few other provisions which put some limits on your right to move freely



about Canada. One allows for the possibility that you may not be entitled to receive social services such as welfare or medical assistance if you have not lived in your new province for a certain period of time (section

6(3)(b)). Another says that a province with an unemployment rate which is higher than the national average may set policies which give priority for jobs to residents of the province (section 6(4)). □

## ISSUES

● **The provisions of the Charter which deal with mobility rights** caused many arguments between federal and provincial governments and private groups. Some, such as the Canadian Chamber of Commerce, wanted to see very wide mobility rights so that there would be a free flow of labour throughout Canada. Others, such as representatives of Newfoundland and the Northwest Territories, wanted to see mobility rights restricted so that local residents would get first chance at employment

opportunities in those regions. And some provincial governments were afraid that unrestricted mobility rights would mean a rush of people to those provinces where social services were most generous. This part of the Charter, in fact, is a compromise between these concerns. Do you think it is a good compromise? Or do you think that any Canadian should be able to move to any province and obtain employment or social services, regardless of whether he or she has paid taxes in that province? ■

### The Charter In Action

In the *Basile* case it was argued that a statute requiring you to be a permanent resident of Nova Scotia before you could obtain a licence as a sales person in that province offended s.6 of the Charter.

## 5. LEGAL RIGHTS\*

*Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice (section 7).*

### The Charter In Action

In the *Borowski* case it was being argued that abortions violate the unborn child's right to life.

**IF** this right did not exist, the authorities could take your life or put you in jail without a fair trial. Under this provision, the government *can* take away your freedom if you commit a crime but *only after* you

have been convicted at a fair trial. (The death penalty has been abolished in Canada for all but a few offences but could be returned by a vote of Parliament.) □

## ISSUES

● **Who is "everyone"?** Is an unborn baby, for example, a person? If so, is abortion a violation of the baby's right to life as guaranteed in the Charter? What do you think?

● **Compare this section to a similar one in the U.S. Constitution;** it says that *no person shall . . . be deprived of life, liberty or property, without due process of law*. Unlike the American provision which explicitly protects

private property, our provision does not mention property because some public figures were afraid that such a statement would prevent governments from taking measures to reduce the gap between rich and poor Canadians. (The right to enjoy property is protected by the Canadian Bill of Rights but this is a much weaker document than the Charter.) □

\* The provisions of the Charter described in this chapter can be avoided or overridden with respect to particular laws for a period of up to five years. This is done by stating in a particular statute that the statute will operate in spite of the Charter. This is called a notwithstanding clause and can be inserted by either Parliament or the Provincial Legislatures into any legislation. After five years these clauses will become ineffective unless the government re-enacts them.



*Everyone has the right to be secure against unreasonable search and seizure (section 8).*

*Everyone has the right not to be arbitrarily detained or imprisoned (section 9).*

**IF** these rights did not exist, police officers could, without good reason, stop you on the street or enter your home. They could arrest you and keep you in a jail cell until

your trial. Under these provisions, the police must have reasonable grounds for searching you or your home, seizing your belongings or holding you in custody. □

## ISSUES

● **What is *unreasonable search and seizure*?** When is it unreasonable for the police to stop and search people they suspect of breaking the law? The police feel that such measures as skin searches, blood tests and breathalyzer tests are necessary weapons in their battle against crimes like drug trafficking and impaired driving. Do you agree?

● **Prior to the passage of this Section, the Criminal Code of Canada set out guidelines for the police to follow in conducting search and seizure operations.** Depending on

how the courts interpret the word *unreasonable* in this provision, the ability of the police to search and seize may be further restricted or expanded. What do you think are reasonable grounds?

● **What is *arbitrary arrest and detention*?** The police argue that it is sometimes necessary to arrest and hold people accused of crime who will probably not show up for trial if they are released on bail. Do you agree that in some circumstances it is right for the police and the courts to detain people before their trials? □

## The Charter in Action

In the *Cohen* case the accused argued that the cocaine found in her purse should be excluded as evidence since it was obtained by an unreasonable search in violation of this provision. Here the police officer had held the accused in a choke-hold to search her mouth. A later search of her purse revealed the cocaine.

*Everyone has the right on arrest or detention to be informed promptly of the reasons therefor (section 10(a)).*

*Everyone has the right on arrest or detention . . . to retain counsel without delay and to be informed of that right (section 10(b)).*

*Everyone has the right on arrest or detention . . . to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful (section 10(c)).*

## WITHOUT

these rights, the police could arrest and jail you without telling you why. Additionally, they could prevent you from getting legal assistance from a lawyer or fail to tell you that you have a right to legal assistance. They would not have to release you even if they had behaved illegally in arresting you. Under these provisions, a police officer has to tell you promptly why he is putting you under arrest or has detained you for questioning. Police officers now carry a small card which

informs you of your right to speak with a lawyer. If they behave improperly in arresting you or do not have valid reasons for holding you, a court may order your release by way of *habeas corpus*, a Latin expression meaning "you have the body." It springs from the days when you could demand that the king's men bring arrested people before a judge by formally declaring "Habeas Corpus." □



# ISSUES

- **How promptly must the police inform you of the reasons for which they have arrested or detained you?** The police have argued that, if the courts interpret promptness in a strict way, some criminals will escape justice because the police and prosecutors are sometimes unable to say exactly what charge they will lay against a suspect until their investigations are complete. Do you think people accused of crimes should have the charges dropped if the authorities fail to inform them of the reasons for their arrest within a reasonable time?
- **How quickly must the police allow an arrested person access to a lawyer?**

In major cities and towns, this may not be a big problem because it is easy to telephone a lawyer. But suppose a person is arrested for impaired driving at night and cannot reach a lawyer? Is it legitimate for the police to administer a breathalyzer test anyway? Likewise, suppose the police arrest a suspect in a remote part of the country; it may take days for the police to transport the arrested person to the nearest town where a lawyer is available. If, for whatever reason, a person has been denied access to a lawyer, should a judge order his or her release? □

*Any person charged with an offence has the right to be informed without reasonable delay of the specific offence (section 11(a)).*

**THIS** section is intended to give an accused person the right to know exactly how he or she has violated the law. If he or she is being arrested, the police officer must

tell him or her why. The defence lawyer will need to know the charges before he or she can start to prepare to defend the accused person. □

# ISSUES

- **What is unreasonable delay?** Until the courts interpret these words, it is difficult to say exactly when a person must be informed of the specific charges. Is it in the interest of society for the courts to release people who are suspected of serious criminal

behavior because the police and prosecutors have delayed too long? It may happen if the courts give a strict interpretation to the words *without reasonable delay*. What do you think? □

*Any person charged with an offence has the right to be tried within a reasonable time (section 11(b)).*

**THIS** provision is meant to spare unconvicted people unreasonable suffering before a court establishes their guilt or innocence.

Without the protection offered by this provision, the police could arrest

and charge you with an offence which could hang over your head for an indefinite period of time. If they were holding you in jail, you might spend months or years in prison before a court convicted or cleared you. □

# ISSUES

- **The wheels of justice turn slowly;** the courts are often booked up with many trials, the prosecutor may ask for the trial to be delayed in order to gather evidence, jurors may be hard

to find. How long does an accused person have to wait before a trial establishes his or her guilt or innocence?

Under this provision, judges have



ordered people released because the police and prosecutors took too long to bring the accused person to trial. Among the factors they considered were whether the accused person had

been held in custody during the delay, whether postponements were caused by the prosecutor or the police, and the complexity of the case. Do you agree with these guidelines? ☐

*Any person charged with an offence has the right not to be compelled to be a witness in proceedings against that person in respect of the offence (section 11(c)).*

*Any person charged with an offence has the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal (section 11(d)).*

## WITHOUT

these rights, your day in court would be a very unfair event. You might be faced with a trial at which a biased judge (perhaps even the police officer who arrested you!) would assume that you were guilty unless you could prove that you were not. The trial might be held secretly so that the public and the press could not hear the evidence against you. You could be forced to give testimony which would then be used against you. You might not get a trial at all, as frequently happens in other countries

where people remain in jail without a trial or vanish forever.

These provisions guarantee several crucial elements of a fair trial. One of these is that every person is innocent until proven guilty beyond a reasonable doubt. The prosecutor must prove a person's guilt to an unbiased party — either a judge or a jury — during a trial which is open to the public and the press. The accused person need not prove anything and may remain silent during the trial if he or she wishes. ☐

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## ISSUES

● **Most of our laws already adhere to the idea that an accused person is innocent until proven guilty beyond a reasonable doubt.** The onus is on the prosecution. Some laws, however, such as those dealing with possession of safe-cracking equipment and possession of narcotics for the purpose of trafficking, require the accused person to prove that he or she

was not in possession of these prohibited items for the purpose of breaking the law. These are called *reverse-onus* laws. Lawyers for people convicted under these laws have appealed the convictions, arguing that they violate the Charter's guarantee of presumed innocence. Do you agree? ☐

*Any person charged with an offence has the right not to be denied reasonable bail without just cause (section 11(e)).*

**THIS** provision guarantees that a person charged with an offence will be released on reasonable bail until trial unless there is a good

reason to believe that the accused person will fail to return for the trial or that he or she may be dangerous to society if released on bail. ☐

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## ISSUES

● **What is just cause for denying a person's release on bail?** Does the fact that an unfortunate person is without

a fixed address and a job constitute a good reason for keeping him or her in jail until the trial? Such a person, no



matter how unreliable he or she seems, is still innocent until proven guilty. What do you think?

● What if, on the other hand, the person is accused (but not convicted) of a violent crime and *may* repeat similar crimes if released on bail? Do

you think this is just cause for denying bail?

Prior to the Charter, our legal system developed fairly complex guidelines about bail. It still remains to be seen how the Charter will affect these guidelines. □

*Any person charged with an offence has the right . . . to the benefit of a trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment (section 11(f)).*

## WITHOUT

this right, you could be found guilty and sentenced to long years in prison by a single person — the judge (subject to appeal to other judges). The purpose of this provision is to guar-

antee the ancient right of trial by a jury of one's peers (or equals) which keeps our justice system in touch with ordinary people and changing community standards. □

## ISSUES

● **What about the right of young persons to a trial by jury?** Under the Young Offenders Act, which covers young people between their 12th and 18th birthdays, a young person accused of a crime will, except in the most

serious cases, be tried in a Youth Court by a judge alone. Should young people be able to claim the right to a trial by jury under the Charter? □

*Everyone has the right not to be subjected to any cruel and unusual treatment or punishment (section 12).*

## WITHOUT

this right, a judge could order you to undergo punishment or treatment which was far in excess of what is appropriate to your offence and out of line with common practices in Canada. The history of criminal law is certainly full of examples of punishment which were cruel by

modern standards but not unusual. Death by beheading, strangulation and fire were quite common forms of capital punishment.

This provision is meant to ensure that punishment (or treatment) fits the crime and, as such, meets with broad public approval about what is suitable. □

## ISSUES

● **Many existing practices — such as long prison sentences or solitary confinement — may be challenged in court as “cruel.”** Note, however, that this provision gives protection against punishment or treatment which is both cruel *and* unusual. A judge may find that the practice of putting prisoners in solitary confinement is cruel but not unusual and so does not violate this provision. However, the courts may decide to interpret this as meaning cruel *or* unusual and avoid this problem.

● **Although the death penalty is currently abolished in Canada except for espionage, violent mutiny and war crimes, many Canadians favor its return.** If the death penalty were returned by a vote of our elected representatives in Parliament, defence lawyers would almost certainly challenge any death sentences as cruel and unusual punishment. Judges would then have to decide if capital punishment was a violation of the Charter. What do you think?



● **People other than criminals are sometimes forced to undergo treatment.** Mental patients, for example, are sometimes given treatment against their will. Lawyers might argue that such treatment was cruel and unusual. Likewise, people who are terminally ill or unconscious may be given treatment to artificially prolong life. One could argue that the treatment is cruel and unusual because it unnecessarily prolongs the suffering of the patient. What do you think? □

#### OTHER LEGAL RIGHTS GUARANTEED BY THE CHARTER

The Charter contains several other

provisions which guarantee legal rights which Canadians have enjoyed for many years. Some of these rights were stated in earlier declarations of rights, such as the Canadian Bill of Rights passed by Parliament in 1960. These rights, however, could have been taken away by a vote of Parliament. When included in the Charter, these rights became part of our new Constitution and are much more difficult to alter. They are:

- **That** you cannot be found guilty of an offence unless it was illegal at the time you committed it (section 11(9)).
- **That** you cannot be tried or punished more than once for the same

offence (section 11(h)).

- **That**, if the penalty prescribed by law has varied between the time you committed an offence and the time you were convicted, you have the benefit of the lesser penalty (section 11(i)).
- **That** any evidence you give as a witness in someone else's trial cannot be used against you unless you perjure yourself, i.e. tell lies while under oath (section 13)
- **That**, if you cannot understand the proceedings of a trial because you do not speak English or French or are deaf, you may have the assistance of an interpreter (section 14). ■

## 6. EQUALITY RIGHTS\*

*Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability (section 15(1)).*

**THIS** part of the Charter was one of the most controversial elements of the Constitution and subject to months of dispute and debate inside and outside of Parliament. At first glance it seems simple enough — it guarantees legal equality to all Canadian citizens, forbidding discrimination on the basis of such characteristics as race, religion, sex, etc.

Some provinces strongly opposed this anti-discrimination provision, arguing that provincial human rights codes were enough protection against prejudice. In return for their eventual support, the final version of the Charter postponed this provision from coming into effect until April 17, 1985.

Many groups, notably those representing women, were opposed to

allowing for any delays. The result was a compromise; Section 15 was delayed for 3 years, while another equality provision was added to a portion of the Charter which could not be delayed or overridden. It reads, "Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons (Section 28)". □

## ISSUES

● **What does it mean to say that every individual is equal "before and under the law"?** When originally written, this provision of the Charter merely said that all individuals were equal "before the law." Women's groups argued that equality before the law only meant that everybody had equal access to the courts and to

the equal administration of justice. They persuaded Parliament to include the words *under the law* in order to ensure that laws whose content is discriminatory will be struck down by the courts.

● **What about people who may be subject to discrimination but who are not specifically mentioned in this part**

**of the Charter?** For example, this provision forbids discrimination on the basis of sex but does not forbid discrimination on the basis of sexual preference. Does this mean that homosexuals do not have protection from discrimination? Eventually, the courts will decide this. During the debate on this provision, represen-

\* The provisions of the Charter described in this chapter can be avoided or overridden with respect to particular laws for a period of up to five years. This is done by stating in a particular statute that the statute will operate in spite of the Charter. This is called a notwithstanding clause and can be inserted by either Parliament or the Provincial Legislatures into any legislation. After five years these clauses will become ineffective unless the government re-enacts them.



tatives of homosexuals and others argued for a statement which simply forbade discrimination. Listing the kinds of discrimination which are prohibited, they said, seems to permit discrimination against groups of people who are not included in the list. Do you think this list is complete enough or should it include other groups?

● **This provision's prohibition of discrimination on the basis of physical or mental disability was seen as a great victory for disabled people.** But what does it mean to forbid discrimination against people with mental or physical disabilities? It could mean that all public buildings, means of transport, work places, etc.,

must be rebuilt in order to offer full access to disabled citizens.

● **The provision also prohibits discrimination based on age.** Will this mean that compulsory retirement at age 65 is contrary to the Charter? What about minimum age requirements for driving a car or marrying? What about the benefits and discounts that senior citizens enjoy; are they discriminatory against younger people? In our society there are hundreds of rules and regulations which apply according to the age of a person. The courts may find some of them illegal under the Charter. What, if any, forms of discrimination based on age do you think are legitimate? □

*[The above] does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability (section 15(2)).*

**THIS** provision of the Charter allows governments and other institutions to practice a form of legal discrimination not *against* but *in favour of* certain disadvantaged groups of people. This is called *affirmative action*. The idea behind affirmative action is that sometimes disad-

vantaged groups need extra help in order to obtain full equality with other citizens. For example, an affirmative action program might involve setting aside a certain number of places on a government project for members of a disadvantaged group. □

## ISSUES

● **When is affirmative action a form of discrimination against others?** If for example, there are only a certain number of jobs available on a government project and a portion of those jobs are set aside for members of a certain disadvantaged group, other workers who fail to get a job may feel discriminated against. There are many forms of affirmative action and they are often controversial. For example, affirmative action programs in the United States permit universities to set lower admission standards for minority students than for white students. The idea behind this is that minority students are disadvantaged educationally and economically and,

therefore, need special treatment to catch up with the others. This policy became a major legal issue when a white student who met the academic standards of a university was nevertheless denied admission because the university had set aside a number of places for students from minority groups. He took his case to the United States Supreme Court which ruled in his favour. The court decided that this policy, while praiseworthy in its intent, was unconstitutional. What do you think? Is it a good idea to give special treatment to groups who have fallen behind the majority or should everyone be treated equally? ■



# 7. OFFICIAL LANGUAGES OF CANADA

*English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada (section 16(1)).*

**THIS** provision of the Charter confirms that Canada is officially a bilingual country. It, and subsequent provisions of the Charter (sections 16(2)-(22), reproduced in the back of this book), guarantee that every citizen of Canada has the right to use the official language of his or her choice in Parliament, when dealing with the federal civil service or when appearing in any federal court (courts above the provincial court level). These rights have existed for some time in Canada but were based on legislation which could have been altered by Parliament. By including them in the Charter, they become much more difficult to change. □



*English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick (section 16(2)).*

**THIS** provision of the Charter makes New Brunswick constitutionally a bilingual province at its own request. All residents of New Brunswick, of whom many are French-speaking, may choose to use either French or English when speaking in the legislature, receiving services from the provincial civil service or when appearing in a court of that province. New Brunswick's legislature had already declared the province bilingual in a statute prior to the Charter. But, by specifically setting down New Brunswick's bilingualism in the Charter, these

language rights are guaranteed by the Constitution of Canada and are extremely difficult to alter. □

## ISSUES

● **Ontario, like New Brunswick, has a large French-speaking population.** The government of Ontario, however, has refused to yield to pressure to make Ontario a constitutionally bilingual province although it does offer many bilingual services. If you were the premier of your province, whose example would you follow — New Brunswick's or Ontario's? □



*Nothing in [these] sections . . . abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada (section 21).*

**THIS** provision makes sure that the language guarantees set out in the Charter do not exclude language rights which are established in laws other than the Charter. In Quebec, for example, the right to use either French or English in the legislature and in all courts is guaranteed by Canada's first constitution, the British North America Act (BNA) of 1867. The right to use either French or English in Manitoba's legislature and courts is likewise guaranteed by the Manitoba Act of 1870.

Both provinces, incidentally, have tried to eliminate the language rights of the minority in either province. In 1890 the Manitoba government passed a law declaring that only English was to be used in that

province's legislature and courts. It was declared invalid in 1979 by the Supreme Court of Canada because it violated the language guarantees of the Manitoba Act.

Quebec passed a law in 1977 stipulating that French only was to be used in the Quebec legislature, the provincial courts, the civil service, commerce and education. The Supreme Court of Canada struck down the parts of the legislation which declared that only French could be used in the legislature and courts. This, it said, violated the language guarantees established by the BNA Act. Other parts of the law which state only French is to be used in the civil service and business were not challenged in that case. □

## ISSUES

● **Like Ontario, New Brunswick and Manitoba, which have large French-speaking minorities, Quebec has a considerable English-speaking minority. Each province has responded differently.** New Brunswick has guaranteed equality between the French and English languages. Ontario argues that such guarantees are not necessary since it already offers many services in French. In Manitoba, residents have the right to speak French or English in the legislature and courts. In Quebec, likewise, residents have the right to speak English or French in the Quebec legislature and courts. Quebec has

declared that its official language is French, unlike provinces other than New Brunswick which have not made any declaration regarding an official language. The government of Quebec argues that, since the position of the French language is threatened by the dominance of English in the rest of Canada and North America, it is necessary to advance the use of French in Quebec. Quebec's language laws have provoked much protest on the part of English-speaking Quebecers. Looking at the options so far adopted by various provinces, which do you think is best? □

*Nothing in [these] sections . . . abrogates or derogates from any legal or customary right or privilege acquired or enjoyed before or after coming into force of this Charter with respect to any language that is not English or French (section 22).*

**THIS** provision is meant to ensure that the English and French language rights guaranteed in

the Charter are not understood as excluding the rights and privileges that other languages may enjoy. If,



for example, the federal government decided that it would be a good idea to offer services in the Inuit language in the Northwest Territories where

large numbers of the population are Inuit-speaking natives, they would be able to do so without fear of violating the Charter. ■

## 8. MINORITY LANGUAGE EDUCATIONAL RIGHTS

*Citizens of Canada whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside . . . have the right to have their children receive primary and secondary school instruction in that language in that province (section 23(1)(a)).*

**THE** question of which language — French, English or even some other — in which to educate children has always been a major concern in Canada. This rather complicated provision of the Charter attempts to guarantee that people in a minority position in their province will be able to send their children to school in the language of their choice. But, because the area is controversial, this section is subject to some major qualifications. Let's look at who benefits from these guarantees.

First of all, you only have a choice between French and English language instruction if you are a Canadian citizen and are part of an official language minority group in a province. If you are one of Canada's many permanent residents (i.e. immigrants who have not yet obtained citizenship) the language in which your children will be educated will, generally speaking, depend upon provincial legislation. This means that English will probably be the language of instruction for your children in those areas of Canada where English is spoken by the majority of the population, although this can be varied by provincial law. In Quebec, the language of instruction of your children will in most cases be French, unless provincial law estab-

lishes otherwise.

Apart from citizenship, the first part of the rule in this provision of the Charter says that, if your mother tongue is French or English, you have the constitutional right to have your children educated in that language. A second part of this provision says that, if you have received primary school instruction anywhere in Canada in English or French and are part of an official language minority of a given province, you have the constitutional right to have your children educated in that language. This provision, as a whole, was unacceptable to the Government of Quebec. As a result, the Constitution Act, 1982 (section 59) provides that only the second part of this provision applies in the province of Quebec until such time as the gov-

ernment of Quebec specifically authorizes the application of the first part to Quebec. Thus if you are a French-speaking citizen who lives in a predominantly English-speaking province, you have the right to have your children educated in French. If you are an English-speaking citizen who received primary school education in English anywhere in Canada, you have the right to educate your children in English in Quebec.

There is, however, another major qualification on this right found in section 23(3) (reproduced in the back of this book). It says that the minority language educational rights apply only where there are *sufficient numbers* of children of this minority language to justify providing minority language instruction. □

## ISSUES

- **How do you determine if a person's "first language learned and still understood" is French or English?** Some people learn one language at home but end up feeling more comfortable as adults in the other. Some people learn both at home.
- **What are sufficient numbers to**

**justify offering education in a minority language?** For example, should a province set up a French-language school program for a dozen French-speaking children in an English-language school district? For a hundred such children? What do you think are sufficient numbers in your community? □

*Citizens of Canada . . . who have received their primary and secondary school instruction in Canada in French or English and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province have the right to have their children receive primary and secondary school instruction in that language in that province (section 23(1)(b)).*



*Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada have the right to have all their children receive primary and secondary school instruction in the same language (section 23(2)).*

**THESE** two provisions of the Charter extend minority language rights to two more categories of citizens. The first says that if you were taught in school in either French or English, you have a right to ask that your children be taught in that language no matter where you live in Canada. As mentioned above, this provision applied in Quebec so if, for example, your parents went to school in English anywhere in Canada and then moved to Quebec, they would have a right to send you to school in English.

The second provision says that if one of your children has received education in either French or English, then all your other children have a right to education in that language. These language guarantees are subject, however, to an important condition; minority language educa-

tional opportunities need only be provided when there are *sufficient numbers* of children belonging to a minority language group. You should note, as well, that these language

guarantees only apply to primary and secondary levels of education. There are no guarantees for minority language rights at the post-secondary level of education. □

## ISSUES

● **Though this part of the Charter says that children whose parents, brothers or sisters received instruction either in French or English may also be taught in that language if there are sufficient numbers of them, it does not say what sufficient numbers are.** In time, the courts will likely come up with a formula regarding what numbers or percentages of minority languages children are sufficient justification for minority language schooling in any particular school district. What do you think would be

fair guidelines? Keep in mind that, as a taxpayer, you would have to help pay the additional costs of minority language education.

● **In many Canadian communities there are large groups of people whose mother tongue is neither French nor English.** Do you think they should have the right to be educated in the language of their choice? Do you speak one language at home and another at school? If so, how do you feel about this? ■

## 9. ENFORCEMENT

*Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances (section 24,1).*

**THIS** provision is what puts muscle behind all the guarantees made in the Charter. Under it, any person in Canada who feels that his or her rights and freedoms as set out in the Charter have been violated may seek a remedy in court. The courts, according to this provision, may provide such remedies

as are appropriate and just in the circumstances. If, for example, you had been denied reasonable bail in violation of section 11(e), (see page 11, Legal Rights), you could appeal to a court. If the judge feels you have proved your case, he or she could make an order that you be released immediately on bail. Likewise, if the

government passed a law which violated any provision of the Charter, any citizen directly affected by the law could take the matter to court. If the courts decided that the law was contrary to the Charter, the law would be struck down. □

*Where . . . a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if*



*it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute (section 24(2)).*

**THIS** controversial provision directs judges to exclude evidence from courtroom proceedings which has been gathered in violation of the Charter and the use of which would give our justice system a bad name. For example, we would

probably lose respect for a justice system which convicted a man whose confession had been beaten out of him by the police in violation of the Charter guarantee against self-incrimination (section 11(c)). A confession made under police clubs would hardly

be reliable. The police and prosecutors, however, fear that this provision will result in many criminals escaping justice on a technicality, such as happens in the United States with its strict rules for the exclusion of evidence. □

## ISSUES

● **Is the evidence gained as the result of a forced confession or an illegal search also to be excluded from a trial?** For example, in a well-known Canadian case (*The Queen v. Wray*) a suspected murderer broke down and confessed under police pressure. He then told the police where he had hidden the murder weapon in a swamp. The trial judge and the appeal judge rejected the weapon as evidence because it had been unfairly obtained. The use of unfairly obtained evidence, they said, would bring the administration of justice into disrepute. The Supreme Court of Canada overruled the lower court judges,

saying that the relevance of the evidence was what counted, not the reputation of the administration of justice. What do you think? Suppose the police burst into a person's home without search warrants in contravention of section 8 and seized a quantity of drugs? Should they be allowed to use the drugs as evidence in court even though they acted illegally in obtaining them?

● **Judges are supposed to exclude evidence which, given all the circumstances, would bring the administration of justice into disrepute.** What are those circumstances? In the case of *Rothman v. The Queen*, the police

obtained a confession by a trick; they placed an undercover police officer in the suspect's cell. The suspect then confided in the officer. When the case reached the Supreme Court of Canada, the judges could not agree. The majority felt that the confession should be admitted, while the minority felt that its admission would put our justice system in a bad light. What would you do?

Suppose the police officer had pretended to be a priest taking the suspect's confession — would use of the confession in court in that case bring our justice system into disrepute? ■

# 10. GENERAL PROVISIONS

*The guarantee in the Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada... (section 25).*

**EVER** since people of European origin took possession of Canada, native people — the first inhabitants — have asked for and received special status in Canada. This special status has been established by treaties, and a series of land claim settlements between native

groups and Canadian authorities which recognize traditional native rights to land, fishing, hunting, etc. Native people were extremely concerned that the proposed Charter would erode their aboriginal rights. The purpose of this provision is to ensure that other provisions of the

Charter are not interpreted in such a way as to eliminate the special status given to native people in our society as a result of the treaties and settlements between natives and Canadian authorities. □



# ISSUES

• **This section means that, in spite of the equality provisions of the Charter, all Canadians are not equal.** Native people will continue to have rights and freedoms based on treaties and land settlements which other Cana-

dians do not have. The argument in favor of this special treatment is that native people obtained these aboriginal rights in return for signing away — or otherwise being deprived of — most of the land which had been

theirs before the arrival of Europeans. It would not be fair at this point to breach these promises made to native people throughout Canadian history. Do you agree? If not, why not? □

## OTHER GENERAL PROVISIONS

This area of the Charter contains a number of other provisions which did not conveniently fall into one of the other areas or which were added during the Constitutional debate as a result of public pressure. They are:

• **That** nothing in the Charter is meant to deny that rights and freedoms other than those guaranteed in the Charter may exist or

may be created (section 26). For example, the fact that the right to own property is not included in the Charter does not undermine the protection given private property in common law and by the Canadian Bill of Rights.

• **That** the Charter must be interpreted in a way that does not run contrary to Canada's multi-

cultural nature (section 27).

• **That** the rights and freedoms set out in the Charter apply equally to male and female persons (section 28).

• **That** nothing in the Charter can be interpreted as reducing the rights of private religious schools to select students and teachers on the basis of religious persuasion (section 29).

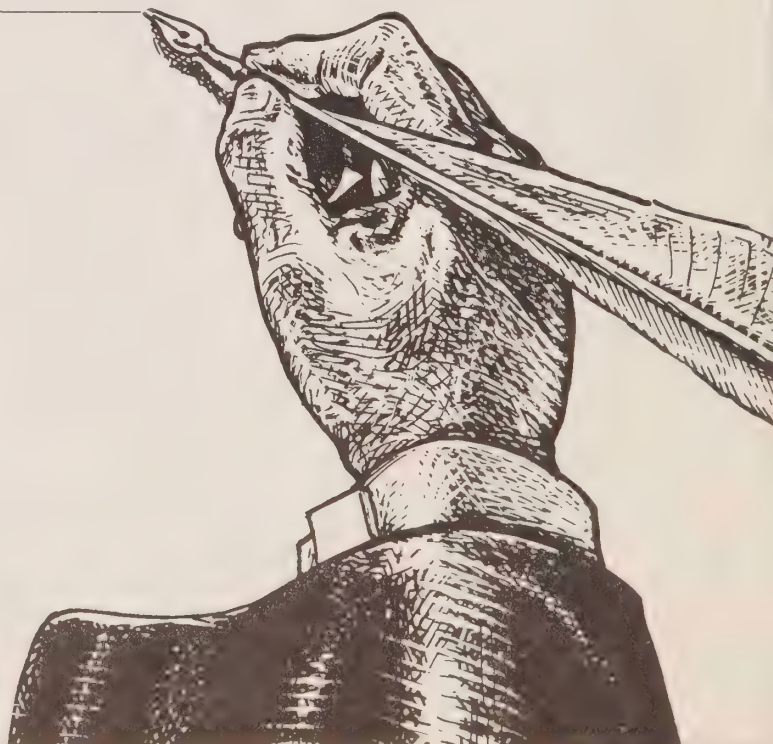
## YOU AND THE CHARTER

Throughout this book you have seen that the Charter of Rights and Freedoms raises a great many questions about just what those rights and freedoms are. The Charter may entrench our rights and freedoms in a basic way but it is Canada's courts which will, in case after case, furnish the details about how the Charter will apply to our complex society. It is only then that we will be able to say, "That is what the Charter is about!"

In addition, the Charter is entrenched but it is not carved in stone. It may well be that the courts will interpret it in a manner which is unacceptable to you and a majority of your fellow citizens. It may happen that social changes render parts of the Charter obsolete or may require the addition of new provisions. You and other Canadians may then have to turn to the task of altering the Charter by means of a constitutional amend-

ment. (In just over two centuries, our American neighbours have amended their constitution many times.)

The proclamation of the Charter was just the beginning. As with a child, our Charter was finally born after a long pregnancy and a difficult birth; it must now grow and become strong in bone and flesh. All of us — and particularly young Canadians — will be witnesses to and participants in that process. ■





# Canadian Charter of Rights and Freedoms

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

## Guarantee of Rights and Freedoms

Rights and freedoms in Canada

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

## Fundamental Freedoms

Fundamental freedoms

2. Everyone has the following fundamental freedoms:  
(a) freedom of conscience and religion;  
(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;  
(c) freedom of peaceful assembly; and  
(d) freedom of association.

## Democratic Rights

Democratic rights of citizens

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

Maximum duration of legislative bodies

4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members.

Continuation in special circumstances

(2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

Annual sitting of legislative bodies

5. There shall be a sitting of Parliament and of each legislature at least once every twelve months.

## Mobility Rights

Mobility of citizens

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

Rights to move and gain livelihood

(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right  
(a) to move to and take up residence in any province; and  
(b) to pursue the gaining of a livelihood in any province.

Limitation

(3) The rights specified in subsection (2) are subject to  
(a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and  
(b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

Affirmative action programs

(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

## Legal Rights

Life, liberty and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Search or seizure

8. Everyone has the right to be secure against unreasonable search or seizure.

Detention or imprisonment

9. Everyone has the right not to be arbitrarily detained or imprisoned.

Arrest or detention

10. Everyone has the right on arrest or detention  
(a) to be informed promptly of the reasons therefor;  
(b) to retain and instruct counsel without delay and to be informed of that right; and  
(c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

Proceedings in criminal and penal matters

11. Any person charged with an offence has the right  
(a) to be informed without unreasonable delay of the specific offence;  
(b) to be tried within a reasonable time;  
(c) not to be compelled to be a witness in proceedings against that person in respect of the offence;  
(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;  
(e) not to be denied reasonable bail without just cause;  
(f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;  
(g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;  
(h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and  
(i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

Treatment or punishment

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Self-incrimination

13. A witness who testifies in any proceedings has the right not to have an incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

Interpreter

14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.



## Equality Rights

Equality before and under law and equal protection and benefit of law

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Affirmative action programs

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Continuation of existing constitutional provisions

Rights and privileges preserved

21. Nothing in sections 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada.

22. Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French.

## Official languages of Canada

Official languages of Canada

16. (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.

Official languages of New Brunswick

(2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick.

Advancement of status and use

(3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.

Proceedings of Parliament

17. (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament.

Proceedings of New Brunswick legislature

(2) Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick.

Parliamentary statutes and records

18. (1) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative.

New Brunswick statutes and records

(2) The statutes, records and journals of the legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative.

Proceedings in courts established by Parliament

19. (1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament.

Proceedings in New Brunswick courts

(2) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court of New Brunswick.

Communications by public with federal institutions

20. (1) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where

- (a) there is a significant demand for communications with and services from that office in such language; or
- (b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.

Communications by public with New Brunswick institutions

(2) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French.

Language of instruction

23. (1) Citizens of Canada

(a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or  
(b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province,

have the right to have their children receive primary and secondary school instruction in that language in that province.

Continuity of language instruction

(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.

Application where numbers warrant

(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province.

(a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and

(b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

## Enforcement

Enforcement of guaranteed rights and freedoms

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

Exclusion of evidence bringing administration of justice into disrepute

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

## General

Aboriginal rights and freedoms not affected by Charter

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

(a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and



(b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

#### Citation

Citation 34. This Part may be cited as the *Canadian Charter of Rights and Freedoms*.

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Other rights and freedoms not affected by Charter

26. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.

Multicultural heritage

27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

Rights guaranteed equally to both sexes

28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

Rights respecting certain schools preserved

29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools.

Application to territories and territorial authorities

30. A reference in this Charter to a province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory and the Northwest Territories, or to the appropriate legislative authority thereof, as the case may be.

Legislative powers not extended

31. Nothing in this Charter extends the legislative powers of any body or authority.

#### Application of Charter

Application of Charter

32. (1) This Charter applies  
(a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and  
(b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

Exception

(2) Notwithstanding subsection (1), section 15 shall not have effect until three years after this section comes into force.

Exception where express declaration

33. (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.

Operation of exception

(2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.

Five year limitation

(3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.

Re-enactment

(4) Parliament or a legislature of a province may re-enact a declaration made under subsection (1).

Five year limitation

(5) Subsection (3) applies in respect of a re-enactment made under subsection (4).

